

BEFORE THE HUMAN RIGHTS COMMISSION  
OF THE STATE OF MONTANA

TIFONIE SCHILLING O/B/O GS,  
Charging Party/Appellant

-v-

GREAT FALLS PUBLIC SCHOOL DISTRICT #1,  
Respondent/Appellant

Case # 0094013798

FINAL AGENCY DECISION

Charging Party, Tifonie Schilling on behalf of GS, filed a complaint with the Department of Labor and Industry (Department) on June 10, 2009, which alleged discrimination in education on the basis of disability by the Great Falls Public School District #1 (School District). The case went before the Hearings Bureau of the Department of Labor and Industry, which held a contested case hearing. The hearings officer issued a Decision on May 19, 2011. Schilling filed an appeal with the Montana Human Rights Commission (Commission). The Commission considered the matter on September 14, 2011, and by Order issued on November 10, 2011, remanded the matter to the Department of Labor and Industry, Hearings Bureau, for a determination of an appropriate award to rectify the harm experienced by G.S. as a result of the discrimination, pursuant to § 49-2-506, MCA.

On February 17, 2012, the Department of Labor and Industry, Hearings Bureau, issued a Decision After Remand, which set forth the finding that \$150,000 constituted an appropriate award for damages resulting from the discrimination experienced by G.S. in the classroom. On March 1, 2012, Tifonie Schilling, o/b/o G.S., filed a Notice of Appeal with the Montana Human Rights Commission (Commission) and requested oral argument. On March 2, 2012, Great Falls Public School District #1 also filed a Notice of Appeal with the Commission. The Commission considered the matter on May 9, 2012. Randy Tarum, attorney, appeared and presented oral argument on behalf of Tifonie Schilling on behalf of GS. Dave C. Dalthorp, attorney, appeared and presented oral argument on behalf of Great Falls Public School District #1.

## **STANDARD OF REVIEW**

The Commission may reject or modify the conclusions of law and interpretations of administrative rules in the hearing officer's decision but may not reject or modify the findings of fact unless the Commission first reviews the complete record and states with particularity in the order that the findings of fact were not based upon competent substantial evidence or that the proceedings on which the findings were based did not comply with essential requirements of law. *Admin. Rules of Mont. 24.9.123(4)*. A factual finding is clearly erroneous if it is not supported by substantial evidence in the record, if the fact-finder misapprehended the effect of the evidence, or if a review of the record leaves the Commission with a definite and firm conviction that a mistake has been made. *Denke v. Shoemaker*, 2008 MT 418, ¶ 39, 347 Mont. 322, ¶ 39, 198 P.3<sup>rd</sup> 284, ¶ 39. The Commission reviews conclusions of law to determine whether the hearing officer's interpretation and application of the law is correct. *See, Denke*, ¶39.

## **DISCUSSION**

After careful consideration of the complete record and the argument presented by the parties, the Commission determines the hearing officer's findings are based upon substantial evidence in the record and the hearing officer correctly applied the law.

## **ORDER**

IT IS HEREBY ORDERED, that the appeal of Tiffonie Schilling o/b/o G.S. is DENIED.

IT IS FURTHER ORDERED, that the appeal of Great Falls Public School District is DENIED.

The Commission adopts, incorporates and affirms the hearing officer's Decision After Remand in its entirety.

Either party may petition the district court for judicial review of the Final Agency Decision. *Sections 2-4-702 and 49-2-505, MCA.* Judicial review must be requested within 30 days of the date of this Final Agency Order.

DATED this 14<sup>th</sup> day of May, 2012.

\_\_\_\_/l.m.minich/\_\_\_\_\_  
L.M. Minich, Chair  
Human Rights Commission

## CERTIFICATE OF SERVICE

The undersigned secretary for the Human Rights Commission certifies that a true and correct copy of the foregoing ORDER was mailed to the following by U.S. Mail, postage prepaid, on this 14th day of May, 2012.

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Tam Newby, Legal Secretary  
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